

In the United States Bankruptcy Court
for the
Southern District of Georgia
Waycross Division

In the matter of:

RICK TAYLOR TIMBER
COMPANY, INC.
(Chapter 11 Case 92-50324)

Debtor

RICK TAYLOR TIMBER
COMPANY, INC.

Plaintiff

v.

ORIX CREDIT ALLIANCE, INC.
and
THE FIRST NATIONAL BANK
OF ALMA

Defendants

Adversary Proceeding

Number 92-5038

MEMORANDUM AND ORDER

The Debtor, Rick Taylor Timber Company, Inc., filed a Chapter 11 petition on June 9, 1992. Orix Credit Alliance, Inc. ("Orix") and John Deere Company ("John Deere") filed motions for relief from stay on certain equipment, which the Debtor uses in its business. A hearing on the motions was held on September 17, 1992, at which time I

granted Orix's motion as to one piece of equipment and took the Orix motion on another piece of equipment and the John Deere motion under advisement.

Subsequent to the September hearing, Debtor filed an adversary against Orix in order to avoid Orix's security interest. Debtor argued at the September hearing and argues in the adversary that Orix's security interest was unperfected at the time Debtor filed bankruptcy and that the security interest may be avoided pursuant to 11 U.S.C. Section 544.

A pre-trial hearing in the adversary proceeding was held on December 7, 1992. After considering the evidence presented at the September hearing and the argument of the parties at the pre-trial hearing, the court concludes that the Orix motion for relief from stay and the adversary proceeding should be consolidated as the court cannot decide the motion for relief until the validity and extent of Orix's security interest is established. Also, the court concludes that John Deere's motion will not be ruled upon until after the trial in the adversary. In making this decision, the court takes the following evidence and argument into consideration.

Orix seeks relief from stay on a feller buncher in order to obtain the insurance proceeds from the collateral. The feller buncher burned sometime after Debtor filed bankruptcy. The insurance check which is payable to Debtor and Orix has been paid into the court's registry. First National Bank of Alma ("First National") also asserts an interest in the insurance proceeds from the feller buncher as it gave Debtor financing and took a security interest in the feller buncher and other equipment. John Deere has a security interest in a skidder and a loader.

A problem arose at the September hearing in determining if the Debtor corporation acquired an interest in any of the equipment subject to the security agreements of Orix, John Deere and First National. At that hearing the evidence showed that Rick Taylor, owner of the Debtor corporation, had been in partnership with Wendall R. Medders. Rick Taylor and Medders were owners of M & T Logging, Inc. The partnership and corporation were dissolved sometime in 1991. Taylor testified that he and Medders intended to transfer their interests in certain equipment to Rick Taylor's new corporation, Rick Taylor Timber, Inc., the Debtor. This transfer to the Debtor is evidenced by a bill of sale dated January 23, 1992. *See Debtor's Exhibit "2"*.

The fellerbuncher, Orix's collateral and the skidder and loader, John Deere's collateral, are specifically listed in this bill of sale to the Debtor. In order to decide if the Debtor acquired any legally enforceable interest in the equipment the court must consider the testimony, the legal effect of the bill of sale and debtor's arguments that its control and use of the equipment and its maintaining insurance on the equipment gave Debtor certain rights to the collateral.

Orix argues that its dealings were with Mr. Medders and Rick Taylor individually and with the original partnership and that Orix never had any dealings with the Debtor. The conditional sales contract assigned to Orix lists the parties to that agreement as Industrial Tractor Company, Inc., and "Ricky C. Taylor and Wendall R. Medders, d/b/a M & T Logging." *See Plaintiff's Exhibit "1"*. Orix argues that the bill of sale conveyed the corporate interests in the equipment and that Medders and Taylor, individually liable to Orix, did not convey their individual interests in the equipment. Orix asserts that the Debtor did

not acquire title to the feller buncher and that the Debtor has no interest in the feller buncher subject to the automatic stay.

John Deere makes a similar argument that it dealt with the original corporation, M & T Logging, Inc., and never had any agreement with the Debtor. *See* Movant's Composite Exhibit "1", which lists the party obligated to John Deere as M & T Logging, Inc. John Deere asserts that the bill of sale is ineffective to convey to the Debtor any legally enforceable interest in the equipment and argues that its collateral is not subject to the automatic stay. John Deere also asserts that selling the collateral to the Debtor subject to its security interest constituted a conversion, which could not pass title to the Debtor/buyer.

Debtor argues that Orix did not perfect its security interest in the equipment until after Debtor filed bankruptcy. A UCC-1 statement perfecting Orix's security interest in the feller buncher was not filed until July 9, 1992, after Debtor filed his petition. *See* Plaintiff's Exhibit "4". However, Orix asserts that it has another blanket security agreement, which was timely perfected. Additional evidence to clarify this issue is needed.

First National Bank of Alma asserted that its security interest in the feller buncher and other collateral was perfected prior to Orix's security interest, which should give the bank priority over Orix. *See* First National's Exhibit "1".

On November 2, 1992, Debtor filed an adversary against Orix and First National to determine the extent, priority, and validity of the liens of these two creditors.

Debtor asserts that Orix's security interest, which allegedly was not perfected at the time Debtor filed bankruptcy, should be avoided. Debtor needs a decision in the adversary before the insurance proceeds may be distributed to Debtor or either Defendant in the adversary.

A pre-trial hearing on the adversary was held on December 7, 1992. Counsel for John Deere was given notice of the hearing as the issues concerning its motion were so clearly aligned with the issues in the adversary. After argument of the parties, the court concluded that the effect of the bill of sale would be a primary issue in the adversary as well as the two motions for relief already under advisement. As the Debtor, Orix, and First National intend to present evidence concerning the legal effect of the bill of sale and other evidence of Debtor's interest in or lack of interest in the equipment transferred by the bill of sale, this court chooses not to rule on either motion for relief until after the trial of the adversary. Furthermore, the court can find no harm to John Deere in postponing any decision on its motion as Debtor was ordered at the September hearing to make monthly adequate protection payments to John Deere. John Deere agreed at that hearing that the amount of the payments was reasonable. The adequate protection payments were current as of the date of the December pre-trial conference.

In light of the foregoing, this court will render a decision on the Orix motion for relief from stay and the John Deere motion for relief from stay contemporaneously with a final order in the adversary. IT IS THE ORDER OF THIS COURT that for thirty (30) days after entry of this order John Deere is free to intervene as a party in the adversary in order to protect its interests.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of December, 1992.